

## **REMARKS**

The Office Action mailed February 22, 2008, has been received and reviewed. Each of claims 1-5, 7-15, 18-25 and 28-30 stands rejected. Claims 1 and 7-9 have been amended herein. Accordingly claims 1-5, 7-15, 18-25 and 28-30 remain pending. Reconsideration of the above-identified application in view of the above amendments and the following remarks is respectfully requested.

### **Rejections based on 35 U.S.C. § 102**

“A claim is anticipated only if each and every element as set forth in the claim is found, either expressly or inherently described, in a single prior art reference.” *Verdeggal Brothers v. Union Oil Co. of California*, 814 F.2d 628, 631, 2 USPQ 2d 1051, 1053 (Fed. Cir. 1987). “The identical invention must be shown in as complete detail as is contained in the . . . claim.” *Richardson v. Suzuki Motor Co.*, 868 F.2d 1226, 1236, 2 USPQ 2d 1913, 1920 (Fed. Cir. 1989). *See also*, MPEP § 2131.

Claims 1-5 and 7-10 were rejected under 35 U.S.C. 102(e) as being anticipated by U.S. Publication Number 2004/0098286 to Zimmerman et al. (hereafter the “Zimmerman reference”). As the Zimmerman reference fails to describe, either expressly or inherently, each and every element of claims 1-5 and 7-10, Applicants respectfully traverse the rejection, as hereinafter set forth.

As currently amended, claim 1 recites a system for managing clinically related supply procurement. The system includes a first interface to receive patient supply data captured from at least one clinically related site, the patient supply data comprising items used and/or consumed during a clinical event. The system also includes a second interface to receive care provider preference data for said clinical event from the at least one clinically related site. The

system further includes an analytic engine. The analytic engine communicates with the first interface and the second interface. The analytic engine also compares alternative supply selection options based on prices supplied by at least two vendors for items equivalent to those in the patient supply data and the care provider preference data. The analytic engine also generates analytic reports that compare the alternative supply selection options.

Applicants respectfully assert that the Zimmerman reference does not describe “comparing alternative supply selection options based on prices supplied by at least two vendors,” or “generating analytic reports that compare the alternative supply selection options,” as recited in claim 1. The Zimmerman reference describes determining that items on a preference card are incompatible with a patient based on patient demographic data. *See* Zimmerman reference Abstract. The Zimmerman reference also describes comparing the number of items remaining after a clinical even with the number of items on the default preference card. *See* Zimmerman reference [0056]. The Zimmerman reference does not describe vendors or price information from at least two vendors. Further, the Zimmerman reference does not generate alternative supply options or generate a report based on alternative supply options. Accordingly, the Zimmerman reference does not describe “comparing alternative supply selection options based on prices supplied by at least two vendors,” or “generating analytic reports that compare the alternative supply selection options.”

As the Zimmerman reference fails to describe, either expressly or inherently, each and every element of independent claim 1, Applicants respectfully submit that claim 1 is not anticipated by the Zimmerman reference. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection of claim 1.

Claims 2-5 and 7-10 depend directly or indirectly from independent claim 1. Claims 2-5 and 7-10 are allowable by virtue of their dependency from allowable claims 1 and

because they contain further patentable features. For example, claim 7 recites “comparing the alternative supply selection options based on volumetric pricing information as a function of alternative supply selections.” Volumetric pricing is not described in the Zimmerman reference. Claim 8 recites “comparing the alternative supply selection options based on correspondence ratings between care provider preference data and alternative supply selections.” The Zimmerman reference does not describe alternative supply selections or correspondence ratings between alternative supply selections and care provider preference data. Accordingly, Applicants respectfully request withdrawal of the 35 U.S.C. § 102(b) rejection of claims 2-5 and 7-10.

**Disqualification of prior art reference under 35 U.S.C. § 103(c)(1),**

Applicants respectfully assert that U.S. Publication Number 2004/0098286 to Zimmerman et al. (hereafter the “Zimmerman reference”) is disqualified as a 35 U.S.C. § 103(a) reference under 35 U.S.C. § 103(c)(1).

**A. Applicable Authority**

35 U.S.C. § 103(c)(1) states:

Subject matter developed by another person, which qualifies as prior art only under one or more of subsections (e), (f), and (g) of section 102 of this title, shall not preclude patentability under this section where the subject matter and the claimed invention were, at the time the claimed invention was made, owned by the same person or subject to an obligation of assignment to the same person.

**B. The Zimmerman reference only qualifies as prior art under 102(e)**

The Zimmerman reference does not qualify as prior art under 102(a) or (b) because the publication date of the Zimmerman reference, May 20, 2004, is after the January 2, 2004, filing date of the present application. Thus, Zimmerman only qualifies as prior art under 35 U.S.C. § 102(e).

**C. Statement Establishing Common Ownership**

The undersigned attorney of record hereby states that both the invention of the present application and the subject matter of the Zimmerman reference were, at the time the present invention was made, owned by or subject to an obligation of assignment to Cerner Innovations, Inc. Accordingly, the Zimmerman reference is disqualified under 35 U.S.C. § 103(c)(1).

**Rejections based on 35 U.S.C. § 103**

Claims 11-15, 18-25 and 28-30 are rejected under 35 U.S.C. 103(a) as being unpatentable over the Zimmerman reference in view of U.S. Publication Number 2004/0108140 to Motte et al. Applicants respectfully traverse the rejection, as hereinafter set forth. As explained above, the Zimmerman reference is disqualified for use as a 35 U.S.C. § 103(a) reference. Accordingly, reliance on the Zimmerman reference to form a 35 U.S.C. § 103(a) rejection is inappropriate. Thus, the present U.S.C. § 103(a) rejection of claims 11-15, 18-25 and 28-30 should be withdrawn as it is based on a disqualified reference.

### **CONCLUSION**

For at least the reasons stated above, claims 1-5, 7-15, 18-25 and 28-30 are now in condition for allowance. Applicants respectfully request withdrawal of the pending rejections and allowance of the claims. If any issues remain that would prevent issuance of this application, the Examiner is urged to contact the undersigned – 816-474-6550 or johoward@shb.com (such communication via email is herein expressly granted) – to resolve the same.

It is believed that no fee is due in conjunction with the present amendment. However, if this belief is in error, the Commissioner is hereby authorized to charge any amount required to Deposit Account No. 19-2112, referencing Attorney Docket No. CRNI.111419.

Respectfully submitted,

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